

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HUNTAIR, INC.,)	Civil Action No. 07 C 6890
)	
Plaintiff,)	The Honorable David H. Coar
)	
v.)	Magistrate Judge Morton Denlow
)	
CLIMATECRAFT, INC.,)	
)	
Defendant.)	

**CLIMATECRAFT, INC.'S MOTION FOR LEAVE TO FILE ITS
AMENDED ANSWER AND COUNTERCLAIMS**

ClimateCraft moves pursuant to FED. R. CIV. P. 15(a) for leave to file an Amended Answer and Counterclaims, including new affirmative defenses and counterclaims. A clean version of the newly tendered ClimateCraft's Amended Answer and Counterclaims is attached hereto as Exhibit A, while a redlined version to show the changes from the originally filed Answer is attached hereto as Exhibit B. ClimateCraft requested consent to this Motion from Plaintiff, Huntair, Inc., shortly before the Motion was filed, but Huntair's counsel was not able to commit to a position on the Motion given the limited time. ClimateCraft will inform the Court prior to the hearing on this Motion if Huntair indicates whether it opposes this Motion.

In summary, the newly tendered amended answer, affirmative defenses and counterclaims adds the defenses and counterclaims of patent unenforceability with regard to the patents asserted.

In support of its motion, ClimateCraft states as follows:

1. This Court's original scheduling order permits motions for amendment of the pleadings to be submitted on or before April 30, 2008.

2. Pursuant to FED. R. CIV. P. 15(a), leave to amend pleadings “should be freely given when justice so requires.” *Crest Hill Land Dev., LLC v. City of Joliet*, 396 F.3d 801, 804 (7th Cir. 2005). “[L]eave to amend … may be properly denied at the district court’s discretion for reasons including undue delay, the movant’s bad faith, and undue prejudice to the opposing party.” *Crest Hill*, 396 F.3d at 804 (*citing Foman v. Davis*, 371 U.S. 178, 182 (1962)).

3. “Prejudice to the non-moving party is the touchstone for the denial of an amendment.” *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993). The burden to demonstrate prejudice squarely rests on the party opposing the amendment. *Kiser v. General Electric Corp.*, 831 F.2d 423, 428 (3d Cir. 1987). Further, the filing of a motion to amend by the court-ordered deadline creates a “presumption of timeliness.” *Inline Corp. v. Tricon Restaurants, Int’l*, 2002 WL 133185, at *1 (N.D. Tex. 2002).

4. Although ClimateCraft’s investigation is continuing, at least the following is known. The patent applicant withheld material information from and/or misrepresented material information to the U.S. Patent and Trademark Office (“PTO”) with the intent to deceive. Upon information and belief, this information includes withheld knowledge of and/or misrepresentations regarding prior art.

5. ClimateCraft reserves the right to gather and rely on further evidence in support of these allegations, pursuant to the Federal Rules of Civil Procedure.

6. Discovery is underway. The parties have responded to initial document requests and interrogatories and each has produced some, but not all, of its responsive documents to the other. No depositions have yet to take place, but scheduling of them is underway.

7. These facts and others support the requested amendments.

WHEREFORE, ClimateCraft respectfully requests that the Court grant its motion to file the amended pleading in the form attached hereto as Exhibit A.

Respectfully submitted,

Dated: April 30, 2008

/s/ Charles C. Kinne

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF MOTION** was served by ECF upon:

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this 30th day of April, 2008.

/s/ Charles C. Kinne
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